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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,591	01/20/2006	Richard Merken-Schiller	HO-P03195US0	9719

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EXAMINER

DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/540,591	Applicant(s) MERKEN-SCHILLER ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/23/06</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13-16,17,25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the phrase "and/or" is indefinite in that it fails to definitively further limit the claims as the claims cannot recite all or one of the elements.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9,13-15,17-21,25,27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Patterson (US 4,246,223).

In claim 1, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material (see Figs. 2,3,6,7 and C3,L43 – C4,L64).

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In claim 2, Patterson discloses the invention as claimed including the tension being relaxed in a controlled manner as the material stretches to conform to the die mold and as the pad 100 is released off the forming die.

In claim 3, Patterson discloses the invention as claimed including controlling the tension by applying retaining pressure to pad 100 in the peripheral regions 162 (see Figs.6,6 and C5, L21-39).

In claims 4-6, Patterson discloses the invention as claimed including, the peripheral regions moving parallel toward one another as the material is stretched in the die.

In claim 7, Patterson discloses the invention as claimed including forming substantially crease free regions 68 and controlled crease regions (in the area of 36) (see Fig.2).

In claims 8 and 9, Patterson discloses the invention as claimed including heating the web to a controlled temperature prior to deformation, where the temperature is lowered by the transfer of heat into the web (see C6,L23-33).

In claim 13, Patterson discloses the invention as claimed including positive and negative mold 54 and 52 (see Fig. 6 and 7).

In claims 14 and 15, Patterson discloses the invention as claimed including an unheated negative mold 52 and a heated positive mold brought to a constant temperature prior to forming (see C6,L23-33).

In claims 17 and 18, heating and deforming the web between a positive and negative mold 54 and 52, with they tension in the film being relieved in a controlled

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manner by removal of pad 100, and a recovery time after the web has been formed and prior to the loading of the next web, which can be several seconds long (see Figs. 2,3,6,7 and C3,L43 – C4,L64).

In claim 19 and 20, Patterson discloses the invention as claimed including the film web being delivered in cycles as blanks are formed by stamp 22 and 24 (see Fig. 1 and C3,L43-61).

In claims 21 and 28, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material and filling the depression with food (see Figs. 2,3,6,7, C1,L10-22 and C3,L43 – C4,L64).

In claims 25 and 27, Patterson discloses the invention as claimed including permanently deforming a sheet of film 28, using positive and negative molds 54 and 52 for forming depressions 70, which the tension is controlled by draw pads 100, while forming controlled creases (in the area of 36) in the material and heating means 172 and 174 (see Figs. 2,3,6,7 and C3,L43 – C4,L64).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson in view of Prena (US 3,762,125).

Patterson discloses the invention as claimed except for the use of indicia on the web of material, which is deformed during the packaging process. However, Prena teaches that it is old and well known in the art of packaging to provide a film "F" with printed and undistorted indicia marks 48, which are stretched and deformed by rollers 36 and 38 prior to packaging for the purpose of correctly orienting a film prior to filling (see Fig.3 and C5,L26-65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the film deformation means as taught by Prena for the purpose of correctly orienting a film prior to filling.

7. Claims 16 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson in view of Fujii (US 4,124,421).

Patterson discloses the invention as claimed except for the use of a vacuum source to assist in the deformation process. However, Fujii teaches that it is old and well known in the art of package forming to utilize a vacuum source 46, located in a female die for the purpose of forming a package with a defined depression (see Fig.3 and C4,L12-42).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the

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vacuum means as taught by Fujii for the purpose of forming a package with a defined depression.

8. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patterson in view of Porteous (US 5,009,056).

Patterson discloses the invention as claimed except for introducing the food in a free flowing state and sealing the package after filling. However, Porteous teaches that it is old and well known in the art to form a package from a web of material 14, where the package is filled with a material in a free flowing state and subsequently sealed by heat bonding for the purpose of efficiently forming and filling a package (see Figs. 3,5,8 and C4,L4 – C5,L14).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Patterson with the forming and filling means as taught by Porteous for the purpose of efficiently forming and filling a package.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Paul Durand', with a stylized, cursive script.

Paul Durand
April 2, 2007